

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR -- ADMINISTRATIVE
RULES

ARTICLE 12

RETURN TO WORK
VOCATIONAL REHABILITATION

10001. Definitions.

As used in this Article:

(a) "Alternative work" means work (1) offered either by the employer who employed the injured worker at the time of injury, or by another employer where the previous employment was seasonal work, (2) that the employee has the ability to perform, (3) that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and (4) that is located within a reasonable commuting distance of the employee's residence at the time of injury.

(b) "Claims Administrator" means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(c) "Modified Work" means regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(d) "Permanent and stationary" means the point in time when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment, based on (1) an opinion from a treating physician, AME, or QME; (2) a judicial finding by a Workers' Compensation Administrative Law Judge, the Workers' Compensation Appeals Board, or a court; or (3) a stipulation that is approved by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board.

(e) "Regular Work" means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and

compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(f) "Seasonal Work" means employment as a daily hire, a project hire, or an annual season hire.

Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658.1, Labor Code; Henry v. WCAB (1998) 68 Cal.App.4th 981.

10002. Offer of Work; Adjustment of Permanent Disability Payments.

(a) This section shall apply to all injuries occurring on or after January 1, 2005, and to the following employers:

(1) Insured employers who employed 50 or more employees at the time of the most recent policy inception or renewal date for the insurance policy that was in effect at the time of the employee's injury;

(2) Self-insured employers who employed 50 or more employees at the time of the most recent filing by the employer of the Self-Insurer's Annual Report that was in effect at the time of the employee's injury; and

(3) Legally uninsured employers who employed 50 or more employees at the time of injury.

(b) Within 60 calendar days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:

(1) If an employer does not serve the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in accordance with Labor Code section 4658 (d)(1) and increased by 15 percent.

(2) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, and in accordance with the requirements set forth in paragraphs (3) and (4), each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor

Code section 4658 (d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.

(3) The employer shall use Form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or Form DWC-AD 10003 (Section 10003) to offer regular work. The claims administrator may serve the offer of work on behalf of the employer.

(4) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (2) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(c) If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.

(1) Where there is a final judicial determination that the employee is permanent and stationary on a date later than the date relied on by the employer in making its offer of work, the employee shall be reimbursed any amount withheld up to the date a new notice of offer of work is served on the employee pursuant to subdivision (b).

(2) Where there is a final judicial determination that the employee is not permanent and stationary, the employee shall be reimbursed any amount withheld up to the date of the determination.

(3) The claims administrator is not required to reimburse permanent partial disability benefit payments that have been withheld pursuant to this subdivision during any period for which the employee is entitled to temporary disability benefit payments.

(d) If the employee's regular work, modified work, or alternative work that has been offered by the employer pursuant to paragraph (1) of subdivision (b) and has been accepted by the employee, is terminated prior to the end of the period for which permanent partial disability benefits are due, the amount of each remaining permanent partial disability payment from the date of the termination shall be paid in accordance with Labor Code section 4658 (d) (1), as though no decrease in payments had been imposed, and increased by 15 percent. An employee who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments pursuant to this subdivision.

(e) Nothing in this section shall prevent the parties from settling or agreeing to commute the permanent disability benefits to which an employee may be entitled. However, if the permanent disability benefits are commuted by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board pursuant to Labor Code section 5100, the commuted sum shall account for any adjustment that would have been required by this section if payment had been made pursuant to Labor Code section 4658.

(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work, the employer is not required to provide the regular, modified or alternative work.

(g) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:

(1) the employee was hired for seasonal work prior to injury;

(2) the offer of regular, modified or alternative seasonal work is of reasonably similar hours and working conditions to the employee's previous employment, and where the previous employment was for seasonal work, the one year requirement may be satisfied by cumulative periods of seasonal work;

(3) the work must commence within 12 months of the date of the offer; and

(4) The offer meets the conditions set forth in this section.

Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658, Labor Code, Del Taco v. WCAB (2000) 79 Cal.App.4th 1437, Anzelde v. WCAB (1996) 61 Cal. Comp. Cases 1458 (Writ denied), and Henry v. WCAB (1998) 68 Cal.App.4th 981.

10003. Form [DWC AD 10003 Notice of Offer of Work].

DWC-AD 10003 NOTICE OF OFFER OF REGULAR WORK
For injuries occurring on or after 1/1/05

THIS SECTION TO BE COMPLETED BY EMPLOYER OR CLAIMS ADMINISTRATOR:

Claims Administrator: _____ Claim Number: _____
(Name of Claims Administrator)

Based on the opinion of _____ treating physician _____ QME _____ AME _____, you are able to return to your
(Name of Physician)

usual occupation or to the position you held at the time of your injury on _____ (Date).

Date you are eligible to return to job: _____ (as stated in the above physician's report)

Employer : _____
(Name of Firm)

Job Title: _____

Starting Date: _____

____ This position is at the same location and shift as your pre-injury position.

____ This position is at a different location than your pre-injury position, as follows :

____ This position is for a different shift than your pre-injury position, as follows:

____ (start time) _____ (end time)

You may contact _____ concerning this position. Phone No.: _____
(Name of Contact Person)

This position is expected to last for a total of at least 12 months of work. If this position does not last for a total of at least 12 months of work, you may be entitled to an increase in your permanent disability benefit payments.

This position provides wages and compensation of \$ _____, that are no less than the wages and compensation paid to you at the time of your injury.

I, _____, have obtained the above job offer information from your employer.
(Name of Claims Administrator)

If the job offered is at a different location than the job you held at the time of your injury, and you believe the commuting distance to this job from the residence where you lived at the time of your injury is not reasonable, you may object to the job offer as not being within a reasonable commuting distance. You may also waive this commuting distance requirement. You will be considered to have waived this requirement if you accept the above offer of work or do not reject the offer within twenty calendar days of receipt of this notice.

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THIS SECTION TO BE COMPLETED BY EMPLOYEE:

Claim Number _____

Name of employee: _____ Date offer received: _____

I understand that whether I accept or reject this offer, my remaining permanent disability payments may be decreased by 15%.

Offer of Regular Work at Same Location and/or Shift

___ I accept this offer of regular work.

___ I reject this offer of work. Reason: _____

Offer of Regular Work at a Different Location and/or Shift

I understand that I have the right to object to a work offer when the location or shift is different than what I had at the time of my injury.

___ I accept the offer and waive my right to object to the job location as not being within a reasonable commuting distance from the residence where I lived at the time of my injury.

___ **I object to this offer because the job shift or job location that has been offered is different than the job shift or job location I held at the time of my injury, and I do not believe this job allows a reasonable commute from my residence. I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.**

Signature

Date: _____

If either party has a dispute regarding the offer of regular work, that party may file a Declaration of Readiness with the local district office of the Workers' Compensation Appeals Board (WCAB).

Proof of Service By Mail

I am a citizen of the United States and a resident of the County of _____ . I am over the age of eighteen years and not a party to the within matter. My business address is:

_____.

On _____, I served the **Notice of Offer of Regular Work** on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid, and thereafter deposited in the U. S. Mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at

_____ on _____.

Signature: _____

Copies Served On:

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Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658, Labor Code.

10004. Return to Work Program.

(a) This section shall apply to injuries occurring on or after July 1, 2004;

(b) An “Eligible Employer” means any employer, except the state or an employer eligible to secure the payment of compensation pursuant to subdivision (c) of Section 3700, who, based on the employer’s payroll records or other equivalent documentation or evidence, employed 50 or fewer full-time employees on the date of injury.

(c) “Full-time employee” means an employee who, during the period of his or her employment within the year preceding the injury, worked an average of 32 or more hours per week.

(d) The Return to Work Program is administered by the Administrative Director for the purpose of promoting the employee’s early and sustained return to work following a work-related injury or illness.

(e) This program shall be funded by the Return to Work Fund, which shall consist of all penalties collected pursuant to Labor Code section 5814.6 and transfers made to this fund by the Administrative Director from the Workers’ Compensation Administrative Revolving Fund established pursuant to Labor Code section 62.5. The reimbursement offered to eligible employers as set forth in this section shall be available only to the extent funds are available.

(f) An eligible employer shall be entitled to reimbursement through this program for expenses incurred to make workplace modifications to accommodate an employee’s return to modified or alternative work, up to the following maximum amounts:

(1) \$1,250 to accommodate each temporarily disabled employee, for expenses incurred in allowing such employee to perform modified or alternative work within physician-imposed temporary work restrictions; and

(2) \$2,500 to accommodate each permanently disabled employee, for expenses incurred in returning such employee to sustained modified or alternative work within physician-imposed permanent work restrictions; however, if an employer who has received reimbursement for a temporarily disabled employee under paragraph (1) is also requesting reimbursement for the same employee for accommodation of permanent disability, the maximum available reimbursement is \$2,500. For the purpose of this subdivision, “sustained modified or alternative work” is work anticipated to last at least 12 months.

(g) Reimbursement shall be provided for any of the following expenses, provided they are specifically prescribed by a physician or are reasonably required by restrictions set forth in a medical report:

- (1) modification to worksite;
- (2) equipment;
- (3) furniture;
- (4) tools; or
- (5) any other necessary costs reasonably required to accommodate the employee's restrictions.

(h) An eligible employer seeking reimbursement pursuant to subdivision (d) shall submit a "Request for Reimbursement of Accommodation Expenses" (Form DWC AD 10005, section 10005) to the Division of Workers' Compensation Return to Work Program within ninety (90) calendar days from the date of the expenditure for which the employer is seeking reimbursement. As a condition to reimbursement, the expenditure shall not have been paid or covered by the employer's insurer or any source of funding other than the employer. The filing date may be extended upon a showing of good cause for such extension. The employer shall attach to its request copies of all pertinent medical reports that contain the work restrictions being accommodated, any other documentation supporting the request, and all receipts for accommodation expenses. Requests should be sent to the mailing address for the Division of Workers' Compensation Return to Work Program that is listed in the web site of the Division of Workers' Compensation, at: http://www.dir.ca.gov/dwc/dwc_home_page.htm

(i) The Administrative Director or his or her designee shall review each "Request for Reimbursement of Accommodation Expenses," and within sixty (60) business days of receipt shall provide the employer with notice of one of the following:

- (1) that the request has been approved, together with a check for the reimbursement allowed, and an explanation of the allowance, if less than the maximum amounts set forth in subdivision (d); or
- (2) that the request has been denied, with an explanation of the basis for denial; or
- (3) that the request is deficient or incomplete and indicating what clarification or additional information is necessary.

(j) In the event there are insufficient funds in the Return to Work Fund to fully reimburse an employer or employers for workplace modification expenses as required by this section, the Administrative Director shall utilize the following priority list in establishing the amount of reimbursement or whether reimbursement is allowed, in order of decreasing priority as follows:

- (1) Employers who have not previously received any reimbursement under this program;
- (2) Employers who have not previously received any reimbursement under this program for the employee who is the subject of the request;
- (3) Employers who are seeking reimbursement for accommodation required in returning a permanently disabled employee to sustained modified or alternative work; and,
- (4) Employers who are requesting reimbursement for accommodation required by a temporarily disabled employee.

(k) An eligible employer may appeal the Administrative Director's notice under subdivision (i) by filing a Declaration of Readiness to Proceed with the local district office of the Workers' Compensation Appeals Board within twenty calendar days of the issuance of the notice, together with a petition entitled "Appeal of Administrative Director's Reimbursement Allowance," setting forth the basis of the appeal. A copy of the Declaration of Readiness to Proceed and the petition shall be concurrently served on the Administrative Director.

Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Section 62.5, 139.48, and 5814.6, Labor Code.

10005. Form [DWC AD 10005 Request for Reimbursement of Accommodation Expenses].

Request for Reimbursement of Accommodation Expenses
For injuries on or after July 1, 2004
Form DWC AD 10005

Name of Employer: _____ Address of Employer: _____

Phone Number: _____ Name of Injured Employee: _____

WCAB number (if applicable): _____ Claim Number _____

Job Title (at time of injury): _____

Job Duties (attach job description if available): _____

Date of Injury: _____

Reimbursement is requested for expenses to accommodate a:

_____ temporarily disabled employee (\$1250 maximum)

_____ permanently disabled employee (\$2500 maximum)

Employee's work restrictions and accommodation required (attach treating physician's, QME or AME report):

Itemized list of costs for which reimbursement is requested (attach all receipts):

1. Modification to worksite (list all work done and total cost) _____ Cost _____

2. Equipment, furniture and/or tools (list each item and cost) _____ Cost _____

3. Any other accommodation expenses: _____ Cost _____

(Attach additional sheets if necessary)

Total Costs: _____

The above costs have not been paid for and are not covered by the insurance carrier or any other source.

I declare that the information I have provided on this form is true and correct under penalty of perjury.

Signature of employer or employer's representative _____ Date _____

Form DWC AD 10005 (August 2006)

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Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Section 62.5, 139.48, and 5814.6, Labor Code.

[The remainder of the Article is unchanged.]